

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 15,108

)

Appeal of )

)

INTRODUCTION

The petitioners appeal the decision by the Department of Social and Rehabilitation Services (SRS) to remove two children in SRS custody from the petitioners' foster home. The Department has moved to dismiss the petitioners' appeal. The issues are whether the Board has subject matter jurisdiction over this action and whether the petitioners have legal standing to obtain the relief they are seeking on behalf of the children.

DISCUSSION

The facts necessary to frame the Department's Motion to Dismiss are not in dispute.<sup>(1)</sup> The petitioners are foster parents (presumably licensed by SRS) who, until recently, provided foster care in their home for two children who are in SRS custody, and whom the petitioners intended to adopt. The children are the subject of CHINS proceedings in Family Court.

Sometime prior to June, 1997, apparently with approval of the Family Court, SRS removed the children from the petitioners' foster home and placed them in another foster home. According to petitioners' counsel, the petitioners were excluded from the Court proceedings; however, the Commissioner of SRS considered an appeal by the petitioners of the Department's placement decision. That appeal was denied in a letter to the petitioners dated June 2, 1997 (see attachment). In their appeal to the Human Services Board the petitioners allege, inter alia, that SRS has not acted in the best interests of the children in removing them from the petitioners' home.

The Board has had occasion to consider the standing of foster and natural parents to bring appeals concerning SRS placement of foster children and whether the Board has subject matter jurisdiction over such appeals. In Fair Hearing No. 9455 (copy attached) the Board held that even though 3 V.S.A. § 3091 (a), as a general matter, gives foster parents the right to "request a hearing" before the Board, foster parents do not have "any enforceable legal interest" in a case that involves SRS's placement of children in its custody. Moreover, the board ruled, because adoption of minors is within the jurisdiction of probate court, the Board would not have subject matter jurisdiction in such matters.

In Fair Hearing No. 7809 (see copy), the Board considered the appeal against SRS by the natural parent of a child in SRS custody pursuant to a CHINS order. In that case the Board held that because the

CHINS statutes give the Juvenile Court "exclusive jurisdiction" in all "proceedings" regarding the placement and disposition of those children, the Board does not have subject matter jurisdiction to consider a parent's appeal of a placement decision made by SRS pursuant to a CHINS proceeding.

33 V.S.A. § 5503 provides:

(a) The juvenile court shall have exclusive jurisdiction over all proceedings concerning any child who is...a child in need of care or supervision brought under the authority of this chapter, except as otherwise provided in this chapter.

(b) The orders of the juvenile court under the authority of this chapter shall take precedence over any order of any court of this state, except an order establishing child support, to the extent inconsistent herewith.

As discussed in Fair Hearing No. 7809 (which quoted extensively from a prior decision, Fair Hearing No. 6435), it is the juvenile court that has the "ultimate say as to what is in the child's best interest" (citing In re G.F., 142 Vt. 273,281 [1982]). In this case, even though it appears that the petitioners were unsuccessful in challenging SRS's placement in family court, this failure alone is not sufficient to confer jurisdiction on the Board

--in effect asking the Board to second guess the court.

As discussed by the Board in both Fair Hearings Nos. 7809 and 9455, supra, cases such as these are clearly distinguishable from In re Kirkpatrick, 147 Vt. 637 (1987), in which the Vermont Supreme Court ruled that the Board can hear matters not part of a juvenile court "proceeding"<sup>(2)</sup> (in that case whether a natural mother of a child in SRS custody could appeal a decision by SRS denying her reimbursement for her own psychotherapy). As the Board pointed out in those fair hearings, SRS decisions regarding placement of children in its custody are at the "heart" of CHINS proceedings and, thus, must be considered within the exclusive jurisdiction of the juvenile court.

For the above reasons, it must be concluded that the petitioners do not have legal standing to appeal a decision by SRS regarding the placement of children formerly living in the petitioners' foster home and that 33 V.S.A. § 5503 precludes the Board from taking subject matter jurisdiction over the petitioners' appeal.

### ORDER

The Department's Motion to Dismiss the petitioners' appeal is granted.

1. Copies of the Department's Motion to Dismiss, the petitioners' Opposition to Motion to Dismiss, and the documents submitted by the parties were attached to the hearing officer's Recommendation. The Board accepted counsel for the petitioners' representations as to the contents of the materials the petitioners offered to the Board at its meeting on October 1, 1997.

2. The Board has general oversight over decisions and actions by SRS that affect only the petitioners that are not inextricably tied to questions regarding the best interests of the children.